

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In re: Applications of)	
ViaSat, Inc.)	
For Modification of its Ka-Band Geostationary)	File Nos. SES-MOD-20100714-00158
Space Station Authorizations for the 115.1° and)	SES-MOD-20100714-00159
77.3° West Longitude Orbital Locations to)	
Waive or Extend the Satellite Implementation)	Call Signs S2737 & S2747
Milestones)	
To: Chief, Satellite Division,		
International Bureau		

REPLY COMMENTS OF HUGHES NETWORK SYSTEMS, LLC

Hughes Network Systems, LLC (“Hughes”), by its attorneys and pursuant to Section 25.154(d) of the Commission’s Rules, hereby replies to the Response of ViaSat, Inc. (“ViaSat”) to Hughes’ Comments with respect to the above-captioned applications for authority to swap the milestones that apply to ViaSat’s authorized satellites at the 115.1° West longitude (“115° W.L.”) and 77.3° West longitude (“77° W.L.”) orbital locations. Hughes argued in its initial comments that ViaSat had not made a convincing showing that would justify a waiver of the implementation milestone schedule for its 77° W.L. satellite to permit these companion modifications.

In response, ViaSat contends, *inter alia*, that Hughes is attempting “to stall the implementation of ViaSat’s second satellite” and has provided “no basis for withholding the relief ViaSat seeks.” ViaSat Response at 16. In fact, Hughes’ participation in this proceeding is

intended to highlight only that the policy issues raised by ViaSat's modification requests present a case of first impression in the wake of the Commission's 2003 Satellite Licensing Reform Order ("*SLR Order*"). If, after careful and knowing consideration, the Commission chooses to embrace and grant the ViaSat proposals, it should do so affirmatively with the express recognition that it is establishing a policy change that will guide consideration of any future satellite milestone modification requests.

There is no question that the *SLR Order* marked a significant change in Commission policy regarding the licensing and post-authorization implementation of commercial satellite systems. Gone for the most part are processing rounds, financial qualification showings, and the notion that orbital locations are fungible. First-come/first-served processing, slot-specific queues, implementation bonds, and additional milestones early in the license term now apply to all licenses and letters of intent.

ViaSat's applications must be analyzed under the policies that have been in place since 2003. In this key regard, ViaSat's efforts to rely on a series of pre-*SLR Order* cases must be met with some skepticism. But the Commission need not tarry too long in determining the continuing vitality of these pre-*SLR Order* decisions. Despite ViaSat's considerable efforts to draw analogies to pre-*SLR Order* decisions, the cases it cites are readily distinguishable because (1) they do not involve requests to extend a commencement of construction milestone (but deal instead with pre-*SLR Order* satellite completion and launch milestones), and (2) several of the

cases specifically relied on actual construction efforts undertaken,¹ or even completed,² by the licensees seeking an extension of their construction completion and/or launch milestones.

In the face of the dated nature and questionable relevance of the legal foundation for its proposed milestone swap, ViaSat devotes a significant portion of its Response to public interest and policy-based arguments, asserting that it is playing a unique role in satellite delivery of broadband service, justifying its approach as a reasonable business decision, and seeking to wrap itself in the important strategic goals of the National Broadband Plan. *See* ViaSat Response at 1-6 & 10. ViaSat is correct, of course, in stating that the Commission has in the past “exercised its authority to grant milestone relief on public interest grounds even when such relief was necessitated by a licensee’s voluntary business decisions.” ViaSat Response at 9. Acceptance of that premise, however – which is wholly reasonable in appropriate circumstances – does not necessarily lead to the conclusion that such relief is appropriate here, where ViaSat itself is constrained to admit that no construction of its proposed 77° W.L. spacecraft has occurred and none is currently ongoing or planned.³ With respect to individual requests for waiver, the

¹ *Loral SpaceCom Corporation et al.*, 18 FCC Rcd 6301, 6314 (¶ 25) (IB 2003)(citing “the substantial progress Loral has made in constructing Telstar 8” as compared to a Ka-band authorization at a different orbital location, which was declared null and void) (“*Loral Order*”).

² *ICO Satellite Services, G.P.*, 20 FCC Rcd 9797, 9803 (¶ 25) (IB 2005) (crediting ICO for progress in implementing its licensed NGSO network based on two satellites it constructed and launched prior to switching to a GSO approach). With respect to this case, Hughes notes that ViaSat mischaracterizes it as “a post-licensing reform case” because the decision was issued in 2005, two years after the *SLR Order*; however, the salient aspect of this case is that the specific milestones at issue were established in 2001, two years before the *SLR Order*, and the Commission was dealing specifically with applying its policies to a request to convert a pre-*SLR Order* NGSO network into a single satellite GSO authorization. In doing so, it established a very stringent set of a dozen license-specific milestones covering the two-year period remaining from the GSO commencement of construction milestone to system operation. *Id.* at 9808 (¶ 38).

³ While ViaSat accuses Hughes of “semantic games” in pointing to the equivocal nature of some of ViaSat’s statements regarding what it “may” or “can” do to implement the 77° W.L. satellite (*see* ViaSat Response at 5 n.7), it is evident that ViaSat could have made an

essential determination is not the inherent potential of the orbit/spectrum resource in question to benefit potential users, but the licensee's own potential to implement service in a timely manner, as exhibited through demonstrated commitment to initiate and complete construction. This analysis is even more important under the Commission's post-*SLR Order* approach, under which the fiction of orbital location fungibility has been appropriately abandoned in favor of the first-come/first-served and slot-specific approach now followed in the Commission's rules. *See* Hughes Comments at 7 n.9, *citing SLR Order*, 18 FCC Rcd at 10821-22 (¶ 158).

The more concrete potential benefits that ViaSat enumerates are not public or consumer benefits, but can more accurately be characterized as private benefits to ViaSat, relating to, as the applicant puts it, "ViaSat's need for and ability to deploy this second new satellite." ViaSat Response at 11. Much of the progress that ViaSat sets out with respect to its efforts to implement a 77° W.L. satellite is directly related to, or not severable from, its efforts to construct, launch and operate the 115° W.L. satellite. *See* Hughes' Comments at 12: ViaSat Response at 11-12 & 13. ViaSat does state, however, that it "has a launch contract in place for its second satellite and *has paid \$7.5 million to date* for that launch." ViaSat Response at 12 (emphasis added). Even if additional documentation for this claim can be provided, this showing alone would not be enough in the way of concrete steps toward implementation to be considered by the FCC as evidence to support a conclusion that ViaSat is committed to completing its second authorized satellite.

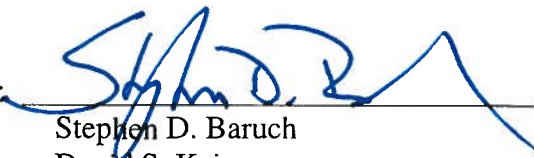
In short, to the extent that the Commission takes this proceeding as an opportunity to provide guidance concerning waiver/extension of the post-*SLR Order* commencement of

unconditional commitment to launching a second satellite by declaring that *if* the requested relief is granted, it *will* immediately proceed with construction of such a satellite consistent with the remaining milestones applicable to the 115° W.L. authorization.

construction milestone, it should make sure it is establishing general principles that can be easily applied to other satellite licensees in the future. Hughes urges the Commission to weigh carefully all of the considerations enumerated here and in its initial Comments before taking final action on ViaSat's request. Only if the Commission finds that ViaSat's request to alter its milestone deadlines will not undermine established FCC policies or otherwise conflict with the public interest should it grant the request and allow the proposed 77° W.L. satellite to proceed on the considerably delayed timetable proposed by ViaSat.

Respectfully submitted,

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November 19, 2010

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CERTIFICATE OF SERVICE

I, Sharon Krantzman, hereby certify that a true and correct copy of the foregoing "Reply Comments of Hughes Network Systems, LLC" was sent by first-class, postage prepaid mail this 19th day of November, 2010, to the following:

John P. Janka, Esquire
Elizabeth R. Park, Esquire
Amanda E. Potter, Esquire
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A handwritten signature in blue ink that reads "Sharon Krantzman". The signature is written in a cursive style with a large, sweeping initial 'S'.

Sharon Krantzman